HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 224 of 2006

Subhash Singh S/o late Ameer singh
R/o Mohalla Shekhpura
P.S. Kankhal
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Suman Kumar S/o Shri Dharmpal
   R/o 838/7, Bazaar Laxmansar
   Amritsar, Punjab
3. Ashutosh Sharma S/o Shri Bhusan Sharma
   R/o village Ladowal, Tehsil & District
   Ludhiana, Punjab
4. Athjarva Sharma S/o Shri Bhusan Sharma
   R/o village Ladowal
   Tehsil & District Ludhiana, Punjab
5. M/s S.R. Traders registered No.298/M.B.D./1971
   Partner Sanjeev Kumar Agrawal
   S/o Prem Nath Agrawal
   R/o Chauk Moni, Amritsar
   P.S. Amritsar, Punjab
   At present R/o Singhdwar, Kankhal
   District Haridwar ...Respondents

Sri Siddartha Sah learned counsel for the applicant.
Sri Rajeev Mohan learned AGA.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 03.02.2005 passed by Chief Judicial Magistrate, Haridwar in misc. case No.9/2005 and order dated 04.03.2006 passed by Addl. Sessions Judge, Haridwar in criminal revision No.65/2006. It has been prayed that the Chief Judicial Magistrate may be directed to pass an appropriate orders on the application of the applicant filed under section 156(3) Cr.P.C. for directing the S.H.O. Thana, Jwalapur, District Haridwar to register the FIR against the respondent No.2 to 5.

2. Brief facts of this case are that the applicant filed an application before the Chief Judicial Magistrate against the respondent Nos.2 to 4 under section 156(3) Cr.P.C. for seeking a direction for lodging the FIR against the four above said respondents. It was alleged that the sale deed and a power of attorney was executed fraudulently by the aforesaid respondents in respect of khasra No. 184 & 191 of village Shekhpura alias Kankhal, Pargana Jwalapur, tehsil & district Haridwar. It was further alleged that they had no right to execute or transfer it in accordance with the provisions of the Transfer of Property Act. The application filed by the applicant was rejected by the Chief Judicial Magistrate vide order dated 03.02.2005. Feeling aggrieved by the said order, a criminal revision was preferred before the Addl. Sessions Judge. The Addl. Sessions Judge dismissed the same vide its order dated 04.03.2006. Feeling aggrieved by both the orders, the present petition has been filed before this Court.

3. It has to be determined that whether the application filed under section 156(3) Cr.P.C. discloses the a criminal offence or it is merely a civil matter. Both the courts below had held that the present case does not fall within the ambit of criminal case and there is a lack of mens-rea.

4. It was contended that the applicant and one- Hem Chandra are the owners and in possession of the property in dispute and their names are recorded in the revenue records. The respondent No.3 & 4 had executed a power of attorney in the name of Suman Kumar-respondent No.2 in respect of the property in

question. The respondent No.2 sold the said property to the respondent No.5. Thereafter, the respondent No.5 filed a mutation application before the Asstt. Collector and the same is still pending. It was contended that both the courts below erred in rejecting the application of the applicant filed under section 156(3) Cr.P.C. It was further contended that the civil and criminal remedies can proceed simultaneously if the offence comes within the purview of criminal mischief. Learned AGA has pointed out that the complaint does not disclose the criminal liability. It was also pointed out that sale deed which is filed before this Court clearly shows that a part of the land was purchased by the respondent No. 3 & 4 and as such the sale deed was executed.

5. Before examining the respective contentions of the parties, it would be appropriate to deal with the provisions of section 420, 463 & 467 IPC. Section 420 provides as under:-

> "420. Cheating and dishonestly including delivery of property- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable for fine."
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> Section 463 IPC provides that {whoever makes any false documents or false electronic

record or part of a document or electronic record, with intent to cause damage or injury}, to the public or to any person, or to submit any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Section 467 IPC deals with the forgery of valuable security, will etc. and it provides as under:-

"467:- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt fro the delivery of any movable property or valuable security, shall be punished with (imprisonment for life) or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

6. The mens-rea should be there from the beginning when the transaction was made between the parties, If there is no mens-rea at the inception, it will not be a criminal offence and it will remain a civil. In this matter, a part of the land belonged to the respondent No. 3 & 4 and as such they have a right to claim over the property. If their claims are wrong, it can be agitated

before the civil court. In view of the recital of the sale deed, I am of the view that there is no mens-rea in this matter. The lack of mens-rea leads to take the inference that it is a merely civil matter. As such, I find that this is purely a case of civil nature and there is no mens rea.

7. In views of the foregoing discussions, I am completely in agreement with the decisions of the courts below. Therefore, the petition is liable to be dismissed.

8. The petition is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 20.04.2006

LSR